

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
FERNANDO HERNANDEZ, JUANY :
GUZMAN, BRANDON ROSE, IRVING : Case No.: 15-CV-1338 (ALC)
COLLADO, ANDRES SALAS, BENGALY :
KONATE, MICHAEL J. RODEIGUEZ, :
WILTON A. DARDAINE, and JUAN :
CORREA, :
:
Plaintiffs, :
:
-- against -- :
:
THE FRESH DIET, INC., LATE NIGHT :
EXPRESS COURIER SERVICES, INC. :
(FL), FRESH DIET EXPRESS CORP. :
(NY), THE FRESH DIET – NY INC. (NY), :
FRESH DIET GRAB & GO, INC. (FL) :
a/k/a YS CATERING HOLDINGS, INC. :
(FL) d/b/a YS CATERING, INC. (FL), :
INNOVATIVE FOOD HOLDINGS, INC. :
(FL), FRESH DIET EXPRESS CORP. (FL), :
NEW FRESH CO., LLC (FL), :
SYED HUSSAIN, Individually, JUDAH :
SCHLOSS, Individually, and SCHER :
ZALMAN DUCHMAN, Individually, :
:
Defendants. :
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NOTICE OF MOTION

PLEASE TAKE NOTICE THAT, upon the Fourth Amended Complaint, the accompanying Memorandum of Law, and the Declaration of David Sack, executed March 10, 2017, and the exhibits attached thereto, upon such opposition papers that may be filed, such reply papers that may be filed, and upon all other pleadings and papers filed herein, Defendant Innovative Food Holdings, Inc. will move this Court, on a date and time to be set by the Court, before the Honorable Andrew L. Carter, United States District Judge for the Southern District of

New York, at the Courthouse thereof, 40 Centre Street, Room 1306, New York, New York 10007, for an Order, pursuant to Fed. R. Civ. P. 12(b)(6), dismissing the Fourth Amended Complaint in its entirety and with prejudice, in the alternative, dismissing the Fourth Amended Complaint as against Defendant Innovative Food Holdings, Inc. in its entirety and with prejudice, and without leave to amend, and for such other and further relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE, that pursuant to the scheduling order set by Magistrate Judge Cott and So Ordered by the Court on February 1, 2017, opposition papers, if any, are to be filed on or before March 31, 2017, and reply papers, if any, are to be filed on or before April 7, 2017.

PLEASE TAKE FURTHER NOTICE, that pursuant to Rule 2(F) of the Court's Individual Rules, Defendant Innovative Food Holdings, Inc. hereby requests oral argument on this motion.

Dated: New York, New York
March 10, 2017

FEDER KASZOVITZ LLP

By: 

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